

BILL LOCKYER, Attorney General
of the State of California
GLYNDA B. GOMEZ, State Bar No. 143448
Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2542
Facsimile: (213) 897-2804

Attorneys for Complainant

BEFORE THE
DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to
Revoke Probation Against:

STEPHEN J. NAHIGIAN, D.D.S.
9735 Wilshire Blvd., Suite 314
Beverly Hills, CA 90212

Dental License No. 28051

Respondent.

Case No. AGS 2003-18

ACCUSATION AND PETITION
TO REVOKE PROBATION

Complainant alleges:

PARTIES

1. Cynthia Gatlin (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Dental Board of California, Department of Consumer Affairs.

2. On or about May 11, 1979, the Dental Board of California issued Dental License No. 28051 to Stephen J. Nahigian, D.D.S. (Respondent). The Dental license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2004, unless renewed.

3. In a disciplinary action entitled "In the Matter of the Accusation Against Stephen J. Nahigian, D.D.S.," Case No. AGS 1997-82, the Dental Board of California, issued a

1 Decision, effective June 30, 2000, in which Respondent's Dental license was revoked. However,
2 the revocation was stayed and Respondent's license was placed on probation for a period of four
3 (4) years with certain terms and conditions. A copy of that Decision is attached as Exhibit A and
4 is incorporated by reference.

5 JURISDICTION

6 4. This Accusation is brought before the Dental Board of California (Board),
7 Department of Consumer Affairs, under the authority of the following laws. All section
8 references are to the Business and Professions Code unless otherwise indicated.

9 5. Section 1670 states:

10 "Any licentiate may have his license revoked or suspended or be reprimanded or
11 be placed on probation by the board for unprofessional conduct, or incompetence, or gross
12 negligence, or repeated acts of negligence in his or her profession, or for the issuance of a license
13 by mistake, or for any other cause applicable to the licentiate provided in this chapter. The
14 proceedings under this article shall be conducted in accordance with Chapter 5 (commencing
15 with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board
16 shall have all the powers granted therein."

17 6. Section 1670.1 states:

18 "Any licentiate under this chapter [chapter 4 (commencing with section 1600)]
19 may have his or her license revoked or suspended or be reprimanded or be placed on probation
20 by the board for conviction of a crime substantially related to the qualifications, functions, or
21 duties of a dentist or dental auxiliary, in which case the record of conviction or a certified copy
22 thereof, certified by the clerk of the court or by the judge in whose court the conviction is had,
23 shall be conclusive evidence.

24 "The board shall undertake proceedings under this section upon the receipt of a
25 certified copy of the record of conviction. A plea or verdict of guilty or a conviction following a
26 plea of nolo contendere made to a charge of a felony or of any misdemeanor substantially related
27 to the qualifications, functions, or duties of a dentist or dental auxiliary is deemed to be a
28 conviction within the meaning of this section. The board may order the license suspended or

1 revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment
2 of conviction has been affirmed on appeal or when an order granting probation is made
3 suspending the imposition of sentence, irrespective of a subsequent order under any provision of
4 the Penal Code, including, but not limited to, Section 1203.4 of the Penal Code, allowing such
5 person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the
6 verdict of guilty, or dismissing the accusation, information or indictment."

7 7. Section 490 states:

8 "A board may suspend or revoke a license on the ground that the licensee has been
9 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
10 of the business or profession for which the license was issued. A conviction within the meaning
11 of this section means a plea or verdict of guilty or a conviction following a plea of nolo
12 contendere. Any action which a board is permitted to take following the establishment of a
13 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
14 been affirmed on appeal, or when an order granting probation is made suspending the imposition
15 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
16 Penal Code."

17 8. California Code of Regulations, title 16, section 1019 states, in pertinent
18 part:

19 "For the purposes of denial, suspension or revocation of a license of a dentist or a
20 dental auxiliary pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or
21 act shall be considered to be substantially related to the qualifications, functions, or duties of a
22 dentist or dental auxiliary if to a substantial degree it evidences present or potential unfitness of a
23 licensee to perform the functions authorized by his license in a manner consistent with the public
24 health, safety, or welfare.

25

26 "(b) Any violation of the provisions of Chapter 4, Division 2 of the Code (Bus. &
27 Prof. Code § 1600 et seq., known as the Dental Practice Act)."

28 ///

1 9. Section 1681 states, in pertinent part:

2 "In addition to other acts constituting unprofessional conduct within the meaning
3 of this chapter [chapter 4 (commencing with section 1600)], it is unprofessional conduct for a
4 person licensed under this chapter to do any of the following:

5

6 "(b) Use any controlled substance, as defined in Division 10 (commencing with
7 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 8
8 (commencing with Section 4211) of Chapter 9, or alcoholic beverages or other intoxicating
9 substances, to an extent or in a manner dangerous or injurious to himself, to any person, or the
10 public to the extent that such use impairs his ability to conduct with safety to the public the
11 practice authorized by his license.

12 "(c) The conviction of a charge of violating any federal statute or rules, or any
13 statute or rule of this state, regulating controlled substances, as defined in Division 10
14 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug, as
15 defined in Article 8 (commencing with Section 4211) of Chapter 9, or the conviction of more
16 than one misdemeanor, or any felony, involving the use or consumption of alcohol or drugs, if
17 the conviction is substantially related to the practice authorized by his license. The record of
18 conviction or certified copy thereof, certified by the clerk of the court or by the judge in whose
19 court the conviction is had, shall be conclusive evidence of a violation of this section; a plea or
20 verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction
21 within the meaning of this section; the board may order the license suspended or revoked, or may
22 decline to issue a license, when the time for appeal has elapsed or the judgment of conviction has
23 been affirmed on appeal, or when an order granting probation is made suspending imposition of
24 sentence, irrespective of a subsequent order under any provision of the Penal Code, including,
25 but not limited to, Section 1203.4 of the Penal Code, allowing such person to withdraw his plea
26 of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
27 accusation, information or indictment."

28 ///

10. Section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

11. Section 125.3, subdivision (a), states, in pertinent part:

"Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

ACCUSATION

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

12. Respondent is subject to disciplinary action under Business and Professions Code section 1670, on the grounds of unprofessional conduct, as defined in Business and Professions Code sections 1670.1 and 490, and by California Code of Regulations, title 16, section 1019, in that Respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a dentist. The circumstances are as follows:

a. On or about February 26, 2003, Respondent was convicted on a plea of nolo contendere of one count of violating Vehicle Code section 23152, subdivision (b), (driving with a blood alcohol content of .08% or higher), a misdemeanor, in the Municipal Court of Airport Branch Judicial District, County of Los Angeles, State of California, Case No. 2WL03503, entitled *The People of the State of California v. Stephen John Nahigian*. The circumstances surrounding the conviction are that on or about October 23, 2002, Respondent was found parked in his vehicle, slumped over in the driver's seat, in an intoxicated condition. Breath tests was administered, and the results were .24% and .26% blood alcohol content.

b. On or about July 12, 2002, Respondent was convicted on a plea of nolo contendere of one count of violating Vehicle Code section 23103, (reckless driving/without

1 injury), a misdemeanor, in the Municipal Court of Santa Monica Judicial District, County of Los
2 Angeles, State of California, Case No. 2SM01323, entitled *The People of the State of California*
3 *v. Stephen John Nahigian*. The circumstances surrounding the conviction are that on or about
4 April 1, 2002, Respondent struck four parked vehicles and then overturned (flipped) his own
5 vehicle. Respondent was arrested for driving under the influence of alcohol and for driving with
6 a blood alcohol of .08% or higher. Breath tests was administered, and the results were .09%
7 blood alcohol content.

8 c. On or about July 12, 2002, Respondent was convicted on a plea of nolo
9 contendere of one count of violating Vehicle Code section 23152, subdivision (a), (driving under
10 the influence of alcohol), a misdemeanor, in the Municipal Court of Santa Monica Judicial
11 District, County of Los Angeles, State of California, Case No. 2SM00495, entitled *The People of*
12 *the State of California v. Stephen John Nahigian*. The circumstances surrounding the conviction
13 are that on or about January 23, 2002, Respondent was found in his vehicle, sitting in the middle
14 of the road, in an intoxicated condition. Breath tests was administered, and the results were .22%
15 and .21% blood alcohol content.

16 SECOND CAUSE FOR DISCIPLINE

17 (Dangerous Use of Alcoholic Beverages)

18 13. Respondent is subject to disciplinary action under section 1670, on the
19 grounds of unprofessional conduct, for violating section 1681, subdivision (b), in that
20 Respondent administered to himself alcoholic beverages to an extent or in a manner dangerous or
21 injurious to himself, to any person, or to the public, when he operated a motor vehicle while
22 having 0.08% and more, by weight, of alcohol in his blood, as set forth in paragraph 12, above.

23 THIRD CAUSE FOR DISCIPLINE

24 (Convictions Involving Unlawful Consumption of Alcohol)

25 14. Respondent is subject to disciplinary action under section 1670, on the
26 grounds of unprofessional conduct, for violating section 1681, subdivision (c), in that he was
27 convicted of violating statutes regulating the use of alcohol, as more fully set forth above in
28 paragraph 12, above.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3
4
5

6

7
8

9

10
11
12
13
14
15
16
17

18

19
20
21
22

23

24
25
26

27

28

1 a. Respondent failed to comply with probation term No. 1 in that he failed to
2 obey all federal, state and local laws. Respondent was convicted of substantially related crimes
3 during the probation period, as set forth more fully in paragraph 12, above.

4 b. Respondent failed to comply with probation term No. 11 in that he failed
5 to successfully complete the DEC treatment program. On or about January 9, 2003, Respondent
6 was dropped from the Dental Board Diversion Program for failure to derive any benefit.

7 c. Respondent failed to comply with probation term No. 13 in that he failed
8 to abstain from alcohol use during the probation period.

9 PRAYER

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein
11 alleged, and that following the hearing, the Dental Board of California issue a decision:


12 1. Revoking or suspending Dental License No. 28051, issued to Stephen J.
13 Nahigian, D.D.S.;

14 2. Ordering Stephen J. Nahigian, D.D.S. to pay the Dental Board of
15 California the reasonable costs of the investigation and enforcement of this case, pursuant to
16 Business and Professions Code section 125.3;

17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: 8-22-03

19
20 
21 CYNTHIA GATLIN

22  Executive Officer
23 Dental Board of California
24 Department of Consumer Affairs
25 State of California
26 Complainant

26 03559110-LA2003600124

27 prepared by cak (07/03)

28 60008302.wpd